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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

WILLIAM MATTHIS, JR.,

Plaintiff,

vs.

ASBESTOS DEFENDANTS (B❖P),

Defendants.

No. 3:07-cv-02866-SC

**[PROPOSED]  
ORDER GRANTING MOTION TO  
REMAND CASE TO CALIFORNIA  
SUPERIOR COURT AND FOR  
PAYMENT OF FEES AND COSTS  
[28 U.S.C. § 1447 (c)]**

Plaintiff's Motion to Remand Case to California Superior Court under 28 U.S.C.

§ 1447(c) came on regularly for hearing on August 10, 2007, in the above-entitled Court.

Plaintiff was represented by the law firm of Brayton❖Purcell LLP. Removing defendant BAE

Systems San Diego Ship Repair, Inc. was represented by the law firm of Buty & Curiliano.

After full consideration of all papers filed herein, and upon hearing of oral argument,  
the Court rules as follows:

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1 BAE Systems has not met its burden of proving jurisdiction under 28 U.S.C.  
2 §1442(a)(1), known commonly as the federal officer removal statute. This action was brought  
3 as a result of the plaintiff's exposure to asbestos and asbestos-containing products while  
4 working aboard a U.S. Navy vessel at the Defendant's facility formerly known as Southwest  
5 Marine.  
6

7 Defendant has neither alleged nor submitted evidence to show that its use of asbestos  
8 containing products and failure to warn plaintiff of the presence and danger of asbestos on its  
9 premises were the result of a specific order by an official of the United States Government.  
10 Thus, the required causal relationship between the defendant's alleged "acting under" the  
11 control of an officer of the United States Government and its exposing of plaintiff to asbestos  
12 products has not been established. Therefore, defendant's removal was improper.  
13  
14

15 Under 28 U.S.C. § 1447(c), the court may order a removing defendant to pay plaintiff  
16 his "just costs and any actual expenses, including attorney fees, incurred as a result of  
17 removal." In light of the facial insufficiency of the allegations in the Notice of Removal,  
18 removal was improper as a matter of law. Therefore the court concludes that an award of costs  
19 and fees is appropriate.  
20

21 IT IS ORDERED that Plaintiff's Motion to Remand to California Superior Court is  
22 hereby GRANTED. Plaintiff is awarded fees and costs in an amount to be determined Plaintiff  
23 shall file a memorandum of fees and costs with the court not later than two weeks from the date  
24 of this order.  
25

26 Dated: \_\_\_\_\_

\_\_\_\_\_  
Samuel Conti  
United States District Court Judge